

Filed in District Court

State of Minnesota

STATE OF MINNESOTA

July 2, 2019

DISTRICT COURT

COUNTY OF BECKER

SEVENTH JUDICIAL DISTRICT

Margaret Campbell,  
Plaintiff,  
v.

**ORDER DENYING  
MOTION TO DISMISS  
AND MOTION TO STAY**

Honor the Earth,  
Defendant.

Court File No.  
03-CV-19-266

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This matter came on for hearing on May 8, 2019 before the Honorable Gretchen D. Thilmony, Judge of District Court, in the County of Becker, State of Minnesota upon Defendant's motion to dismiss for lack of jurisdiction. Attorney Christy Hall appeared on behalf of Plaintiff. Attorney Frank Bibeau appeared on behalf of Defendant. On June 19, 2019, Defendant also moved to stay these proceedings pending a decision from the Court on the motion to dismiss.

**NOW THEREFORE**, having duly considered the documents and proceedings herein, together with the applicable law, this Court enters the following:

**ORDER**

1. Defendant's motion to dismiss is **DENIED**.
2. Having denied the motion to dismiss, Defendant's motion to stay is **DENIED**.
3. See attached Memorandum, which is incorporated herein by reference.

Dated: July 2, 2019

BY THE COURT:

*Gretchen D. Thilmony*  
Honorable Gretchen D. Thilmony  
Judge of District Court

## **MEMORANDUM**

### ***FACTUAL BACKGROUND***

On February 11, 2019, Plaintiff Margaret Campbell filed the present action against Defendant Honor the Earth alleging violations of the Minnesota Human Rights Act, Minnesota Statute chapter 363A. On February 13, 2019, Honor the Earth moved to dismiss the lawsuit for lack of subject matter jurisdiction, citing Public Law 280. The Complaint alleges the following facts:

Honor the Earth is a nonprofit corporation registered with the State of Minnesota under Minnesota Statute chapter 317A, with a registered office at 607 Main St., Callaway, Becker County. Compl. ¶¶ 3-4; see also Answer 1 (admitting ¶¶ 3-4). This address is within the White Earth Reservation. Honor the Earth advocates for Native American environmental issues. Compl. ¶ 9. Its founder and executive director, Winona LaDuke, is an enrolled member of the Ojibwe Nation. Id. ¶¶ 13; see also Answer 1 (admitting ¶ 13).

Campbell is a Minnesota citizen. Compl. ¶ 1. At hearing, Plaintiff's counsel further asserted that Campbell is not an enrolled member of any tribe. Campbell worked for Honor the Earth full-time for about six years, from 2009 to 2015. Id. ¶ 10. Sometimes she worked remotely from her home in Saint Paul. Id. ¶ 11. Sometimes she worked at the Callaway office, and resided with other Honor the Earth employees at a shared residence on the White Earth Reservation. Id. ¶¶ 11, 35. Campbell's work also required traveling to workshops involving potential funders and other Native American and/or environmental advocacy organizations. Id. ¶ 39. In 2013, a new employee, Michael Dahl, transitioned to Honor the Earth from another organization founded by LaDuke. Id. ¶¶ 20-22.

Campbell alleges that, beginning in Fall 2014, Campbell was a victim of sexual harassment by Dahl and witnessed him sexually harassing others. Id. ¶¶ 23-24, 28-30, 40-41. Some of these alleged events occurred on the White Earth Reservation; others occurred while traveling for Honor the Earth. Id. ¶¶ 39-42 (British Columbia), 49-51 (Colorado). Campbell was also pressured to allow Dahl to live at the shared employee residence. Id. ¶¶ 36-38. Although Campbell and others reported Dahl's behavior to LaDuke, their complaints were dismissed because of Dahl's position as a "spiritual leader" or because "that's just how Michael is." Id. ¶¶ 26-27, 31, 37, 42, 53.

Campbell allegedly became increasingly uncomfortable around Dahl and stopped staying at the shared residence, preferring to work remotely from Saint Paul. *Id.* ¶¶ 48, 55. Campbell also started hearing rumors, which she felt were supported by behaviors she had witnessed, that Dahl had engaged in sexually inappropriate behavior with minors. *Id.* ¶¶ 45, 25. Campbell brought these concerns to LaDuke, who claimed these were “just rumors from political enemies trying to harm Honor the Earth.” *Id.* ¶ 47. Campbell also sought to address her concerns with other leadership at Honor the Earth. *Id.* ¶¶ 43–44, 52.

Campbell alleges that, although LaDuke agreed to host a meeting to address Campbell’s concerns, *id.* ¶ 58, LaDuke continued to be dismissive and declined to take action against Dahl, *id.* ¶¶ 72–74. Campbell therefore contacted an ally of Honor the Earth for assistance in persuading LaDuke. *Id.* ¶¶ 77–79. Upon learning of this, Honor the Earth leadership berated Campbell for going outside the organization and ordered her to “follow LaDuke’s lead.” *Id.* ¶¶ 80–81. Soon after, LaDuke asked Campbell to work on an anti-sexual violence event for Honor the Earth. *Id.* ¶ 84. Campbell refused, citing LaDuke’s failure to address Dahl’s behavior. *Id.* ¶ 85.

In February 2015, Campbell was placed on unpaid administrative leave, allegedly for violating confidentiality though Honor the Earth did not have a confidentiality policy. *Id.* ¶¶ 101–02. Campbell chose to resign. *Id.* ¶ 104. LaDuke then allegedly sent Campbell a “threatening” email, telling her to “stay quiet about what had happened.” *Id.* ¶ 106. Thereafter, Campbell attended a meeting “to address sexual abuse by purported spiritual leaders in the Native community,” which resulted in an open letter to Honor the Earth and LaDuke. *Id.* ¶¶ 106–08. LaDuke subsequently sent Campbell a “cease and desist” letter, and LaDuke’s lawyer sent Campbell a letter accusing her of defamation. *Id.* ¶¶ 109, 111. Campbell has since “been effectively blacklisted from working in the environmental movement.” *Id.* ¶ 112.

#### **LEGAL ANALYSIS**

Honor the Earth argues that this Court does not have the authority to decide this matter pursuant to the federal Public Law 280, which determines a state’s jurisdiction (or lack thereof) over matters involving tribal nations within their borders. Honor the Earth therefore moves to dismiss this case for lack of subject matter jurisdiction under Minnesota Rule of Civil Procedure 12.02(a). *See generally Rasmussen v. Sauer*, 597 N.W.2d 328, 330

(Minn. Ct. App. 1999) (“Subject matter jurisdiction refers to a court’s authority to consider an action or issue a ruling that will decide the issues raised by the pleadings.”). In deciding a motion to dismiss, the Court must “accept all facts alleged in the complaint as true and construe all reasonable inferences in favor of the non-moving party.” Brenny v. Bd. of Regents of the Univ. of Minn., 813 N.W.2d 417, 420 (Minn. Ct. App. 2012) (citing In re Individual 35W Bridge Litig., 806 N.W.2d 820, 826–27 (Minn. 2011)).

## **Background**

Tribal nations retain “attributes of sovereignty over both their members and their territory.” State v. Stone, 572 N.W.2d 725, 728 (Minn. 1997) (quoting California v. Cabazon Band of Indians, 480 U.S. 202, 207 (1987)). Thus, “reservation Indians” have the right “to make their own laws and be ruled by them.” Id. at 732 (quoting White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142 (1980)). This sovereignty originates with the tribal nations’ relationship with the federal government—not the states. Id. Thus, federal law determines state court jurisdiction over issues involving tribal members. Id. at 728 (citing Gavle v. Little Six, Inc., 555 N.W.2d 284, 289 (Minn. 1996)). Tribal nations and entities are therefore entitled to sovereign immunity “absent a clear waiver by the tribe or congressional abrogation.” Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla., 498 U.S. 505, 509 (1991).

In Public Law 280, Congress granted Minnesota criminal jurisdiction and limited civil jurisdiction over the tribal lands within its borders (except Red Lake Reservation). Stone, 572 N.W.2d at 728–29 (citing Pub. L. No. 83-280, 67 Stat. 588–89 (1953) (codified as amended at 18 U.S.C. § 1162 (1994), 25 U.S.C. §§ 1321–24 (1994), 28 U.S.C. § 1360 (1994))). The purpose of this grant was to provide Minnesota (and five other states) with the authority to aid tribal nations in combating lawlessness within their lands, as the tribes lacked adequate law enforcement institutions. Bryan v. Itasca Cty., 426 U.S. 373, 378 (1976). Public Law 280 section 4(a), 28 U.S.C. § 1360, grants Minnesota jurisdiction over private civil litigation, but does not grant civil regulatory authority; the tribes necessarily retain the right to regulate the activities within their lands. Stone, 572 N.W.2d at 729. Therefore, “[i]n order for a state law to be fully applicable to a reservation under the authority of Public Law 280, it must be a criminal law.” Id. Thus, to ascertain whether Minnesota has jurisdiction over a particular civil case involving a tribe or its members, the

court must first determine whether the governing statute is criminal or civil in nature. *Id.* at 729–30 (discussing *Cabazon*, 480 U.S. at 209–11).

The United States Supreme Court has established the *Cabazon* test to aid courts in determining whether a particular law is criminal or civil. *Id.* at 729 (citing *Cabazon*, 480 U.S. at 210 (noting there is “not a bright-line rule” distinguishing criminal laws from civil laws)). If a statute is generally permissive—i.e., permits certain conduct subject to regulation—it is civil, or “civil/regulatory.” *Cabazon*, 480 U.S. at 209. If a statute is generally prohibitory—i.e., bans certain conduct subject to exception—it is criminal, or “criminal/prohibitory.” *Id.*

In *Stone*, the Minnesota Supreme Court adopted the *Cabazon* test, but added some clarification to determine the particular “conduct” at issue in the analysis. 572 N.W.2d at 730. In general, the broad conduct targeted by the statute is the focus of the analysis. *Id.* However, in some cases the narrow conduct of a specific subsection of the statute will be the focus due to substantially heightened public policy concerns related to that specific portion.<sup>1</sup> *Id.* After the court identifies the conduct at issue, the second step of the *Stone* analysis is to apply the *Cabazon* test outlined by the United States Supreme Court. *Id.*

### **Application of Public Law 280**

In the present case, a Minnesota citizen is suing a Minnesota corporation under a Minnesota law. Neither tribal immunity nor Public Law 280 apply to the present case.

Neither party is a registered member or a registered corporation of any tribe. Honor the Earth—as alleged in the Complaint and admitted in Honor the Earth’s Answer—is a nonprofit corporation registered with the State of Minnesota, *not* White Earth. Honor the Earth could have registered as a corporation under White Earth Code Title 18, but it elected to register with the State of Minnesota under Minnesota Statute chapter 317A instead. By choosing to incorporate under the laws of the State of Minnesota, Honor the Earth is granted the protections afforded by Minnesota law—and is subject to the

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<sup>1</sup> For example, while traffic laws are intended to protect one’s safety while driving, the prohibition against drinking and driving is intended to protect everyone’s safety from drunk drivers. *Stone*, 572 N.W.2d at 731. Thus, there is a heightened public policy concern in relation to drunk driving. *Id.* A seatbelt infraction would implicate the broad conduct targeted by the statute: driving—permissible conduct subject to regulation. *Id.* Seatbelt laws are therefore civil/regulatory. *Id.* In contrast, a driving-while-intoxicated infraction would implicate the narrow conduct targeted by the statute: driving while intoxicated—prohibited conduct subject to exception. *Id.* Driving while intoxicated laws are therefore criminal/prohibitive. *Id.*

obligations imposed by Minnesota law. Just as the White Earth Nation has the sovereign right to govern its people, Minnesota has the sovereign right—and duty—to interpret and execute its own laws over its own citizens and corporate bodies.

This Court's holding that Public Law 280 does not apply is consistent with persuasive opinions from other courts. For example, Washington's tribal nations are entitled to complete sovereign immunity, as Washington was not included in Public Law 280. Wright v. Colville Tribal Enter. Corp., 147 P.3d 1275, 1278 (Wash. 2006), *cert. dismissed*, 550 U.S. 931 (2007); 28 U.S.C. § 1360. However, Washington's Supreme Court has held that "a tribe may waive the immunity of a tribal enterprise by incorporating the enterprise under state law, rather than tribal law." Wright, 147 P.3d at 1280 (citing William V. Vetter, *Doing Business with Indians and the Three "S"es: Secretarial Approval, Sovereign Immunity, and Subject Matter Jurisdiction*, 36 ARIZ. L. REV. 169, 173 (1994)); see also Hangen v. Sissteon-Wahpeton Cmtv. Coll., 205 F.3d 1040, 1043 (8th Cir. 2000) (holding nonprofit corporation chartered, funded, and controlled by the tribe is a "tribal agency" immune from suit under state employment discrimination law); Aleman v. Chugach Support Serv., Inc., 485 F.3d 206, 213 (4th Cir. 2007) (holding for-profit Alaska Native Corporation's subsidiary was not entitled to sovereign immunity from racial discrimination claim because "Alaska Native Corporations and their subsidiaries are not comparable sovereign entities"); N.L.R.B. v. Chapa De Indian Health Program, Inc., 316 F.3d 995, 1000 (9th Cir. 2003) (holding a nonprofit corporation authorized by a tribe was not entitled to sovereign immunity because, *inter alia*, it had independent funding sources).

Similarly, the Eastern District of New York found that courts consider the following factors in determining whether an organization is an "arm" or "agency" of the tribe entitled to sovereign immunity:

- The entity is organized under tribal constitution or laws (rather than federal law).
- The organization's purpose(s) are similar to a tribal government's (e.g., promoting tribal welfare, alleviating unemployment, providing money for tribal programs).
- The organization's managing body is necessarily composed primarily of tribal officials (e.g., organization's board is, by law, controlled by tribal council members).
- The tribe's governing body has the unrestricted power to dismiss members of the organization's governing body.

- The organization (and/or its governing body) “acts for the tribe” in managing organization’s activities.
- The tribe is the legal owner of property used by the organization, with title held in tribe’s name.
- The organization’s administrative and/or accounting activities are controlled or exercised by tribal officials.
- The organization’s activities take place primarily on the reservation.

Gristede’s Foods, Inc. v. Unkechauge Nation, No. 06-CV-1260 (CBA), 2006 WL 8439534, at \*6-\*7 (E.D.N.Y. Dec. 22, 2006) (citing *Vetter, supra*, at 176-77) (citations to five federal circuit court cases omitted).

Here, Honor the Earth is organized under Minnesota law. Although it advocates for Native American interests, it is not alleged that it advocates for White Earth Nation interests specifically. It has not been suggested that the White Earth Nation has any control over Honor the Earth, nor that LaDuke or any member of its board of directors is a tribal official. Neither party claims that Honor the Earth acts for White Earth, nor that White Earth owns property used by Honor the Earth. Finally, the facts alleged in the Complaint indicate that Honor the Earth does not confine its activities to the White Earth Reservation, though its office was located there. The Complaint not only alleges that multiple incidents of sexual harassment occurred while traveling on behalf of Honor the Earth, but also alleges that Campbell herself worked for Honor the Earth from Saint Paul. Compl. ¶¶ 11, 39-42, 36-38, 48, 55. Furthermore, construing all inferences in favor of Campbell, Honor the Earth allegedly targeted her in Saint Paul with specific acts of reprisal after Campbell stopped working there. *Id.* ¶¶ 106, 109, 111-12. Under this analysis, Honor the Earth is not an “arm” or “agency” of the tribe. Therefore, tribal immunity and Public Law 280 do not apply to a case involving Honor the Earth.

Honor the Earth argues that, because Winona LaDuke is a tribal member, her membership should be imputed to the organization. To do so would eviscerate the separateness of the corporate body. Just as LaDuke is protected from the corporation’s liabilities as a separate entity, so too is she under the obligation to recognize it as a separate entity. This separate entity is not endowed with her rights, privileges, or citizenship; it has its own identity. Furthermore, even if Honor the Earth could be considered a tribal entity based solely on LaDuke’s tribal membership, Honor the Earth

conducts its business on and off White Earth Reservation. "Indians who go 'beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State,' absent express federal law to the contrary." In re Johnson, 800 N.W.2d 134, 139 (Minn. 2011) (quoting Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973)).

This holding is likewise in line with persuasive opinions from other courts. In an unpublished opinion, the Minnesota Court of Appeals found that a corporation owned by a tribal member located on a reservation was not entitled to sovereign immunity. State ex rel. Swanson v. CashCall, Inc., Nos. A13-2086, A14-0028, 2014 WL 4056028, at \*2 (Minn. Ct. App. Aug. 18, 2014).<sup>2</sup> Like Honor the Earth, that corporation was not owned, operated, or approved by a tribe and did not exist for the benefit of a tribe. Id. That court also found it significant that the corporation did not operate exclusively within a reservation, but conducted business throughout the State of Minnesota. Id. at \*3 (citing In re Johnson, 800 N.W.2d at 139). Just as that corporation was not entitled to sovereign immunity, Honor the Earth may not invoke Public Law 280.

Honor the Earth also argues that it is merely a "tool," "owned" by Winona LaDuke. Citing Morgan v. 2000 Volkswagen, 754 N.W.2d 587 (Minn. Ct. App. 2008), it argues that, like the vehicle in that case, this Court cannot exert jurisdiction over a "tool" owned by a tribal member and "used" on tribal lands.<sup>3</sup> However, Honor the Earth is *not* a mere tool—it is a separate and distinct legal entity from its owners, with its own rights and privileges. Its owners are protected from Honor the Earth's liability under Minnesota law, unless the owners themselves violate the law. See generally Victoria Elevator Co. of Minneapolis v. Meriden Grain Co., Inc., 283 N.W.2d 509, 512 (Minn. 1979) (holding shareholder personally liable where sole shareholder failed to maintain separate corporate identity); West Concord Conservation Club, Inc. v. Chilson, 306 N.W.2d 893, 897-98, 898 n.3 (Minn. 1981) (applying Victoria Elevator to nonprofit corporation, stating "evidence that the corporate

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<sup>2</sup> See Donnelly Bros. Const. Co., Inc. v. State Auto Property and Cas. Ins. Co., 759 N.W.2d 651, 659 (Minn. Ct. App. 2009) (finding district courts may cite an unpublished opinion for its persuasive value).

<sup>3</sup> The Court again notes that the Complaint alleges that Honor the Earth does not confine its activities to the White Earth Reservation. Compl. ¶¶ 11, 39-42, 36-38, 48, 55, 106, 109, 111-12.

entity has been operated as a constructive fraud or in an unjust manner must be presented" to hold shareholder liable).

For example, if Honor the Earth was ultimately found to have violated the Minnesota Human Rights Act in the instant case, none of Honor the Earth's officers, directors, and shareholders would be personally liable—even if they were the ones who actually perpetrated the conduct. Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 801 (Minn. 2013). In contrast, under Minnesota law, the owner of a vehicle *is* subject to personal liability when it is used to commit a crime or tort—even if s/he is not the one driving it. See, e.g., MINN. STAT. § 169A.63, subd. 7(d) (permitting the return of a forfeited vehicle to its owner only upon proof that s/he “did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law”); Hutchings v. Bourdages, 189 N.W.2d 706, 708–09 (Minn. 1971) (holding Minnesota law imputes liability to the owner of a vehicle who negligently permits its use in the commission of a tort).

Finally, the case cited by Honor the Earth does not support its argument. In Morgan, the Court of Appeals (conducting the Stone analysis) determined that “ownership of the involved vehicle” was the specific conduct targeted by the statute of concern in that case. 754 N.W.2d at 593 (citing MINN. STAT. § 169A.63, Minnesota’s vehicle-forfeiture law). It then determined that, since vehicle ownership is generally permissible conduct, the forfeiture law was civil/regulatory. Id. *Because that law is civil/regulatory*, the court held that Minnesota did not have jurisdiction to apply the forfeiture law to a vehicle owned by a tribal member used on tribal lands. Id. The court did *not* hold that Minnesota did not have jurisdiction simply because the vehicle was owned by a tribal member—it held that the Minnesota statute regulating vehicle ownership itself did not apply. As will be discussed in more detail below, corporate ownership is not the conduct targeted by the Minnesota Human Rights Act. Thus, the ownership of Honor the Earth—a Minnesota corporation—is not a relevant issue in determining jurisdiction in this case.

### **Stone Analysis**

Even if tribal immunity and Public Law 280 apply to an organization incorporated under Minnesota law on the basis of its address and/or the basis of the membership status of its officers, directors, and/or shareholders, the Minnesota Human Rights Act is criminal/prohibitive. Under Public Law 280, Minnesota’s criminal/prohibitive laws apply

to tribal members on tribal lands. Therefore, this Court has jurisdiction over this private lawsuit.

The first step in the Stone analysis is to determine the conduct targeted by the statute. Stone, 572 N.W.2d at 730. The public policy purpose of the Minnesota Human Rights act is to “secure for persons in this state, freedom from discrimination.” MINN. STAT. § 363A.02, subd. 1(a). The act bars various types of discrimination in employment, housing, public accommodations, public services, and education (i.e., ‘public operations’), id., because “[s]uch discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy,” § 363A.02, subd. 1(b). In her Complaint, Campbell alleges two violations of this Act.

First, Campbell alleges discrimination on the basis of her sex by her employer. Compl., Count 1 ¶ 1 (citing MINN. STAT. § 363A.03, subd. 13, 42, 43). The Court cannot find (nor does Campbell argue) that discrimination in employment has a specifically heightened public policy concern as compared to discrimination in other ‘public operations.’ Likewise, the Court cannot find (nor does Campbell argue) that discrimination on the basis of sex has a specifically heightened public policy concern as compared to discrimination on the basis of “race, color, creed, religion, national origin, . . . marital status, disability, status with regard to public assistance, sexual orientation, [or] age” (the other banned bases of discrimination). § 363A.02, subd. 1(a)(1). Thus, the broad conduct targeted by the statute—discrimination in ‘public operations’—is the conduct of concern.

Second, Campbell alleges that “Defendant unlawfully engaged in reprisal against Plaintiff because she opposed sexual harassment.” Compl. Count 2 ¶ 1 (citing MINN. STAT. § 363A.15). The statute describes “reprisal” as “an unfair discriminatory practice.” § 363A.15. Although the State certainly has an interest in protecting whistle-blowers, the Court cannot find that it is “heightened” as compared to preventing discrimination entirely. Since the statute describes reprisal as a form of discrimination in and of itself, the Court finds that the broad conduct targeted by the statute—discrimination in ‘public operations’—is the conduct of concern as to this allegation as well.

The second step of the Stone analysis is to apply the Cabazon test, i.e., to determine whether the conduct at issue is generally prohibited or generally permitted. Stone, 572 N.W.2d at 730. Under Minnesota law, discrimination in ‘public operations’ is generally

prohibited. § 363A.08–19. In fact, this statute explicitly provides that pursuing opportunities in ‘public operations’ free from discrimination is a *civil right*. § 363A.02, subd. 2. The Act establishes some specific exemptions to the prohibition against unfair discriminatory practices, § 363A.20–26, but this only supports the Court’s conclusion that this law is *prohibitive subject to exception*. The Act does not permit discrimination subject to regulation. Thus, the Minnesota Human Rights Act is a criminal/prohibitive law, and this Court has jurisdiction to evaluate a claim brought thereunder.

This Court also notes that the Minnesota Supreme Court has already determined that Minnesota’s courts have concurrent jurisdiction over allegations against tribal business entities under the Minnesota Human Rights Act where that entity conducts business outside the reservation. Gavle v. Little Six, Inc, 555 N.W.2d 284, 290 (Minn. 1996), *cert. denied* 524 U.S. 911 (1998). Although the Supreme Court decided Gavle prior to Stone, it cited to Gavle favorably in Stone. Stone, 572 N.W.2d at 728 (citing Gavle, 555 N.W.2d at 289). The Stone Court could have overruled, adjusted, or clarified Gavle, but did not. Furthermore, Gavle was decided after Cabazon, and the Gavle Court considered the Cabazon opinion in its analysis. Gavle, 555 N.W.2d at 294–95 (discussing Cabazon, 480 U.S. at 217–19). Although the Gavle Court did not apply the Cabazon test, it plainly considered the principles underlying that decision. Finally, the United States Supreme Court denied certiorari on the Gavle decision, even though Gavle did not explicitly apply the Cabazon test. 524 U.S. 911 (1998). It is clear that Gavle is still “good law” and is in accordance with both the Stone and Cabazon decisions.

The Complaint alleges that Honor the Earth does not confine its activities to the White Earth Reservation. Compl. ¶¶ 11, 39–42, 36–38, 48, 55, 106, 109, 111–12. At this stage, this Court must accept the allegations in the Complaint as true. Brenny, 813 N.W.2d at 420. Therefore, even assuming Honor the Earth is a tribal business entity *and* that Minnesota’s Human Rights Act is civil/regulatory, this Court has concurrent jurisdiction over the present claim. Gavle, 555 N.W.2d at 290; In re Johnson, 800 N.W.2d at 139.

## **Infringement**

The White Earth Tribal Court shares concurrent jurisdiction over the subject matter of this case, as some of the alleged conduct occurred on the White Earth Reservation. Although Campbell chose to file her claim in Minnesota, the ‘first to file’ rule is merely a

“principle” that blends “courtesy and expediency.” Gavle, 555 N.W.2d at 291 (quoting Medtronic, Inc. v. Catalyst Research Corp., 518 F. Supp. 946, 955 (D. Minn. 1981), *aff’d* 664 F.2d 660 (8th Cir 1981)). This principle “should be applied in a manner serving sound judicial administration.” Id. (quoting Orthmann v. Apple River Campground, Inc., 765 F.2d 119, 121 (8th Cir. 1985)). Tribal sovereignty must be—and is—respected by this Court, and is protected as a matter of federal law. Id. Thus, this Court is required to “determine whether the exercise of state authority would violate federal law” by ‘infringing’ on tribal sovereignty—i.e., the right of the White Earth Nation to govern itself and its citizens. Id. (quoting White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143 (1980)). At hearing, Honor the Earth argued that this Court’s exercise of jurisdiction in this case would infringe upon the White Earth Nation’s right to self-governance.

In Gavle, the Minnesota Supreme Court found that deciding whether a tribal business entity was entitled to assert the sovereign immunity defense “does not ‘undermine the authority of the tribal courts’ nor ‘infringe on the ability of Indian tribes to govern themselves.’” Id. (quoting Williams v. Lee, 358 U.S. 217, 272 (1959)). There, the Court was persuaded by Minnesota’s “strong interest in determining for our citizens” the legal claims that may be brought against tribal business entities and the defenses those entities may raise in response. Id. (citing Myers v. Gov’t Employees Ins. Co., 225 N.W.2d 238, 243 (1974)). The Court also noted that “we do not seek to change the tribal laws, to reduce the community’s ability to govern itself, or to remove the tribal court’s jurisdictional claims to actions involving on-reservation activities.” Id.

Here, Minnesota has a very strong interest in evaluating this claim. A citizen of Minnesota is asserting a violation of the Minnesota Human Rights Act, which would constitute a violation of her civil rights under Minnesota law. MINN. STAT. § 363A.02, subd. 2. She is asserting this violation against an organization incorporated under Minnesota law. This claim does not implicate any facet of White Earth law, nor would exercising jurisdiction in this case reduce White Earth’s ability to govern itself. Furthermore, this decision does not remove the White Earth Tribal Court’s jurisdiction over conduct occurring on their reservation, should a future plaintiff seek to bring a claim there. Since Campbell elected to file her claim invoking her Minnesota rights in a Minnesota court, her claim is against a Minnesota corporation, and exercising jurisdiction

does not infringe on White Earth's right to govern itself, it is proper for this Court to exercise jurisdiction in this case.

#### ***CONCLUSION***

Public Law 280 does not apply to the present case. Even if it did, the Minnesota Human Rights Act is a criminal law that prohibits discrimination and thus applies to tribal entities in Minnesota. Therefore, Minnesota has concurrent jurisdiction with White Earth over this matter. Since exercising jurisdiction over this case would not infringe on White Earth's sovereign right to self-governance and Minnesota has a strong interest in evaluating this claim, Minnesota is the proper court to exercise jurisdiction in this case. Therefore, Honor the Earth's motion to dismiss for lack of subject matter jurisdiction is **DENIED**.